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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,203	10/23/2003	Miquel Angel Perez	Perez nonprovisional	8164
7590	11/16/2006		EXAMINER	
John Dodds 1707 N St. NW Washington, DC 20036			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3781	
DATE MAILED: 11/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,203

Applicant(s)

PEREZ, MIQUEL ANGEL

Examiner

Tri M. Mai

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wenkman et al. (4697780) in view of Naylor (1741136) or Wilkinson (451097). Wenkman teaches a vertical arm having an upper and lower portion a shaped tongue 59 being downwardly folded and providing forming an open hook. Wenkman meets all claimed limitations except for receptacle holder being a horizontal member having clasps at 180 degrees apart. Either Naylor or Wilkinson teaches that it is known in the art to provide a receptacle holder comprising a horizontal member as shown in Fig. 6, and 2 respectively. It would have been obvious to one of ordinary skill in the art to provide a horizontal member having two clasps at 180 degrees apart to enable one to carry additional receptacles.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Wenkman rejection as set forth in paragraph 1, and further in view of Tully (5501176). Tully teaches that it is known in the art to provide a connection having rectangular holes 31. It would have been obvious to one of ordinary skill in the art to provide a through rectangular hole in Wenkman as taught by Tully to provide alternative attachment means.

3. Applicant's arguments have been fully considered but they are not persuasive. With respect to the hook portion being hook enabling one to adjust the device on the belt, it is submitted that this is an intended use, the hook shown in Fig. 2 is capable of such intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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With respect to the combination of Wenkman in view of either Naylor or Wilkinson. As set forth above, either Naylor or Wilkinson teaches that it is known in the art to provide a horizontal member having at least two cylindrical clasps and being 180 degrees apart. It is noted that applicant's definition of 180 is broad and would include the two receiving openings in any orientation, as set forth in the canceled claims. Thus, It would have been obvious to one of ordinary skill in the art to provide a horizontal member having at least two cylindrical clasps and being 180 degrees apart as taught by either Naylor or Wilkinson to enable one to hold additional receptacles.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, either Naylor or Wilkinson provide sufficient evidence to suggest that to provide more than one holder would be beneficial instead of one as shown in Wenkman.

With respect to the assertion that the combination are from elements of non-analogous sources, the examiner submits that the applied prior art of record are all directed to receptacle holding devices and they are related and mutually combinable.

With respect to the Tully rejection, the examiner submits that to provide one type of fastening mechanism for another is well known within the art. Thus, It would have been obvious

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to one of ordinary skill in the art to provide a through rectangular hole in Wenkman as taught by Tully to provide alternative attachment means.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

